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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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9 **MICHAEL F. SCHULZE.,**

10 **Plaintiff,**

11 **vs.**

12 **FEDERAL BUREAU OF INVESTIGATION,**
13 **DRUG ENFORCEMENT**
14 **ADMINISTRATION, UNITED STATES**
15 **MARSHALS SERVICE and DEPARTMENT**
16 **OF JUSTICE,**

17 **Defendants.**

1:05-cv-00180-AWI-GSA

**ORDER DENYING PLAINTIFF'S
MOTION AND RENEWED MOTION
TO HOLD FBI'S MOTION FOR
SUMMARY JUDGEMENT IN
ABEYANCE**

Doc.#'s 143 & 149

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19 Currently before the court are the motion and renewed motion of plaintiff pro se Michael
20 F. Schulze ("Plaintiff") to hold the motion for summary judgment of defendant Federal Bureau
21 of Investigation ("FBI") in abeyance pending an order of this court directing FBI to file a more
22 complete Vaughn index. The court will deny this motion because the substantive issues present
23 in FBI's motion for summary judgment and in Plaintiff's motion to hold in abeyance – whether
24 the Vaughn index that has been produced to Plaintiff by FBI contains sufficient information to
25 allow a decision on FBI's reliance on exemptions under the Freedom of Information Act
26 ("FOIA") – are the same. To put the matter simply, FBI has produced a document that FBI
27 contends is an index containing sufficient information to allow the court to make the
28 determination whether FOIA exemptions apply to prevent the release of additional information

1 to Plaintiff. FBI has moved for summary judgment based on the contention that the index it
2 submitted is adequate to show whether the claimed FOIA exemptions should apply and that
3 those exemptions *do* apply as a matter of law that that Plaintiff is therefore entitled to no
4 additional information under FOIA. This is the motion FBI has placed before the court and the
5 court must rule on this motion and deny the motion for summary judgment before Plaintiff can
6 claim an entitlement to any more detailed information.
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8 So far as the court is aware, there is no “recipe” for a Vaughn Index, nor does the word
9 “Vaughn” imply anything more than the authority under which the Index is required. Plaintiff is
10 has argued and cited authority for his contention that FBI is obliged to produce an index that
11 proceeds page-by-page to describe the contents of each page that are subject to exclusion under
12 one or more of the FOIA exemptions. FBI has provided legal argument and authority for their
13 contention that a page-by-page analysis is not necessary. At this point it appears to the court that
14 the parties have argued their respective positions on the matter and it is up to the court to
15 determine whether FBI is entitled to summary judgment or not based on the sufficiency or
16 insufficiency of the index they have submitted. The court cannot hold the matter in abeyance
17 and require FBI to file and serve an index more in line with Plaintiff’s expectations unless and
18 until the court first rules that the index that was submitted is legally insufficient to establish that
19 FOIA exemptions are applicable; that is, unless and until the court first denies FBI’s motion for
20 summary judgment.

21 To the extent that Plaintiff may feel that there is more to be said in opposition to FBI’s
22 motion for summary judgment, the court will delay the filing of a decision on FBI’s motion for
23 summary judgment until fourteen (14) days from the date of service of this order. Any further
24 opposition Plaintiff wishes to file in opposition to FBI’s motion for summary judgment will be
25 considered up until that date.

26
27 THEREFORE, for the reasons discussed above, it is hereby ORDERED that Plaintiff’s
28 motions to hold in abeyance are thereby DENIED.

IT IS SO ORDERED.

Dated: September 28, 2015



SENIOR DISTRICT JUDGE